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DISTRICT OF UTAH  
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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

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UNITED STATES OF AMERICA, : Case No. 1:10 CV 65 CW

Petitioner, : **REPORT AND RECOMMENDATION**

v. : .

JESSE W. JOHNSON JR, : Honorable Clark Waddoups

Respondent. : Magistrate Judge Samuel Alba

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On May 5, 2010, the United States of America filed a petition to enforce its two May 15, 2009 IRS Summonses ("the Summonses") pursuant to 26 U.S.C. §§ 7402(b) and 7604(a). Judge Waddoups issued an Order to Show Cause ("OTSC") on May 12, 2010, which referred this matter to Magistrate Judge Alba for a hearing scheduled for July 6, 2010.

The OTSC directed Respondent to file a written response supported by sworn affidavits to the United States' Petition to Enforce the Summons ("the Petition") within ten days of the OTSC being served upon him. The OTSC also directed the undersigned magistrate judge to convene a hearing on July 6, 2010 at 9:30 a.m. to hear any arguments that would assist him in determining whether Respondent has shown cause as to why he should not be ordered to comply with the Summonses.

Respondent retained counsel shortly before the July 6, 2010 hearing. Pursuant to the parties' agreement as represented through counsel, the undersigned magistrate judge granted Respondent a continuance on the OTSC until August 2, 2010. On August 2, 2010, at 9 a.m. the undersigned convened a hearing on the OTSC at which Respondent appeared, represented by attorney James K. Gilland, and the United States appeared through Assistant United States Attorney Jeannette F. Swent. After the arguments and representations made in the August 2, 2010 hearing, I report the following:

1. The United States has carried its burden of proof to enforce the Summons. Through the Summons and the declaration of the revenue officer that were attached to the Petition, the United States established that: (1) it sought the summoned information for a legitimate purpose, (2) the summoned information is relevant to the legitimate purpose, (3) the summoned information was not already in the possession of the United States; and (4) that the United States followed proper administrative procedures.

2. Once the United States has established its initial burden of proof, the burden shifts to Respondent to show why he should not be compelled to comply with the Summons. Respondent has failed to show cause as to why he should not be ordered to comply with the Summons. In any event, Respondent agreed at the hearing to comply with the Summons.

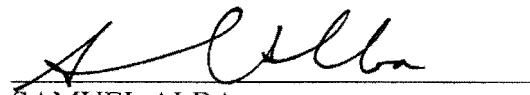
Consequently, the undersigned recommends that:

1. The District Court find that Respondent has failed to show cause why he should not be compelled to comply with the Summons; and
2. The District Court order Respondent to provide the information required by the Summons to the IRS no later than 15 days after the District Court adopts this Report and Recommendation.

Within 14 days after being served with a copy of this Report and Recommendation, a party may serve and file specific, written objections. A party may respond to another party's objections within 10 days after being served with a copy thereof. Pursuant to 28 U.S.C. § 636(b)(1)(C), the District Judge to whom this case is assigned shall make a *de novo* determination upon the record of any portion of the undersigned's disposition to which specific written objection has been made. The District Judge may accept, reject, or modify the recommended decision, receive further evidence, or re-commit the matter to the magistrate judge with instructions.

DATED this 6<sup>th</sup> day of August, 2010.

BY THE COURT:



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SAMUEL ALBA  
United States Magistrate Judge